

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, <i>ex rel.</i>)	
DAVID M. KESTER, et al.,)	Civil Action No.
Plaintiffs,)	1:11-cv-08196 (CM)(JCF)
v.)	
NOVARTIS PHARMACEUTICAL)	ECF CASE
CORPORATION, et al.,)	
Defendants.)	
)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS IN A CIVIL ACTION**

TO: Stephen W. Preston
General Counsel
Department of Defense
1400 Defense Pentagon
Washington, DC 20301-1400

YOU ARE COMMANDED to produce at the time, date, and place set forth below the documents, electronically stored information, or objects set forth in the Exhibit attached to this subpoena on or before May 18, 2015, to Andres C. Healy, c/o Susman Godfrey, LLP, 15th Floor, 560 Lexington Avenue, New York, NY 10022-6828, or as otherwise agreed.

The name, address, e-mail address, and telephone number of the attorney representing Relator David M. Kester, who requested the Court issue this subpoena, are:

Andres C. Healy
1201 Third Avenue, Suite 3800
Seattle, WA 98101-3000
andreshealy@susmangodfrey.com
Telephone: (206) 505-3843

Furthermore, the following provisions of Fed. R. Civ. P. 45 (as set forth at page 3 of the Court's form Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (AO 88B (Rev. 12/13)) are attached: Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

The Honorable James C. Francis
United States District Court
for the Southern District of New York

Civil Action No. 1:11-cv-08196 (CM)(JCF)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any*) _____

on (*date*) _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

on (*date*) _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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Exhibit to Subpoena to DoD General Counsel

Exhibit
DOCUMENT REQUESTS

INSTRUCTIONS

1. Documents are to be produced which are in your possession or control, as well as the possession or control of your employees, agents, or representatives.
2. Each request is a continuing one. If subsequent to complying with this request, you obtain or become aware of any additional documents, please serve them upon Relator through his counsel.

DEFINITIONS

1. Applicable Period means March 1, 2010, to the present.
2. Covered Drug Products include Exjade Covered Drug Products, Gleevec Covered Drug Products, Myfortic Covered Drug Products, Tasigna Covered Drug Products, TOBI Covered Drug Products, and TOBI Podhaler Covered Drug Products.
3. Date of Service means the date the prescription was dispensed to the patient.
4. Exjade Covered Drug Products include the following medications:

Exjade (chemical name: deferasirox), when sold with any of the following National Drug Control (NDC) Numbers:

- a. 00078046815
- b. 00078046915
- c. 00078047015

5. Gleevec Covered Drug Products include the following medications:

Gleevec (chemical name: imatinib mesylate), when sold with any of the following National Drug Control (NDC) Numbers:

- a. 00078037366
- b. 00078040105
- c. 00078040134
- d. 00078040215
- e. 00078043815
- f. 54569584600

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g. 54868528900
h. 54868528901
i. 54868528902
j. 54868528903
k. 54868528904
l. 54868542700
m. 54868542701
n. 54868542702
o. 54868542703
p. 68258902801

6. Myfortic Covered Drug Products include the following medications:

Myfortic (chemical name: mycophenolic acid), when sold with any of the following NDC Numbers:

a. 00078038566
b. 00078038666

7. Tasigna Covered Drug Products include the following medications:

Tasigna (chemical name: nilotinib), when sold with any of the following NDC Numbers:

a. 00078059251
b. 00078059287
c. 00078052651
d. 00078052687

8. TOBI Covered Drug Products include the following medications:

TOBI (chemical name: tobramycin), when sold with any of the following NDC Numbers:

a. 00078049461
b. 00078049471
c. 53905006501
d. 53905006504
e. J-Code J7682
f. J-Code J7685

9. TOBI Podhaler Covered Drug Products include the following medications:

TOBI Podhaler (chemical name: tobramycin inhalation solution), when sold with any of the following NDC Numbers:

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- a. 00078063011
- b. 00078063035
- c. 00078063056

REQUESTS

1. For each Covered Drug Product, provide information from the following data fields or the closest comparable data fields for all claims with a date of service within the Applicable Period reimbursed by a TRICARE or CHAMPUS plan:

- 1. PDE-HICN
- 2. PDE-Cardholder ID
- 3. Bene_Name
- 4. Bene_Last_Name
- 5. Bene-Date of Birth
- 6. Bene-FIPS State Code
- 7. Bene-Zip Code
- 8. SC-Contract Number
- 9. SC-PBP Number
- 10. SC-Contract Name
- 11. Bene-Gender
- 12. Date-Date of Service
- 13. Date-IDR Process Dt
- 14. PDE-Fill No
- 15. Drug-FDB NDC Code
- 16. Drug-FDB Product Name
- 17. Drug-MDDB NDC Code
- 18. Drug-MDDB Product Name
- 19. Drug-Generic name
- 20. PDE-Rx Service Ref No
- 21. PDE-Quantity Dispensed
- 22. PDE-Package Size Unit of Measure
- 23. PDE-Compound Code
- 24. PDE-Days Supply
- 25. PDE-Claim Control No
- 26. PDE-Adj/Del Code
- 27. PDE-Dispensing Status Code
- 28. PDE-Drug Coverage Status Code
- 29. PDE-Non-std Format Code
- 30. PDE-Pricing Exception Code
- 31. PDE-Plan Change Reason Code
- 32. PDE-Prescription Origin Code
- 33. PDE-Catastrophic Coverage Code
- 34. PDE-PDE Cnt
- 35. PDE-Vaccine Admin Fee Amt

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- 36. PDE-Rebate at POS Amt
- 37. Prvdr-Provider Num
- 38. Prvdr-Provider Qualifier Code
- 39. Prscrbr-Prescriber ID per PDE
- 40. PDE-GDCB Amt
- 41. PDE-GDCA Amt
- 42. PDE-Patient Paid Amt
- 43. PDE-Other TrOOP Amt
- 44. PDE-CPP Amt
- 45. PDE-NPP Amt
- 46. PDE-Ingredient Cost Amt
- 47. PDE-Dispensing Fee
- 48. PDE-LICS Amt
- 49. PDE-PLRO Amt
- 50. PDE-Sales Tax
- 51. PDE-DAW Code
- 52. Multi_source
- 53. early_fill
- 54. NCPDP_pharmacy_name
- 55. pharmacy_address
- 56. pharmacy_city
- 57. pharmacy_state
- 58. pharmacy_zipcode
- 59. Reinsurance
- 60. Risk_Sharing
- 61. Government_Impact
- 62. Plan_Impact

2. With regard to the data requested in Request No. 1 above, provide a TRICARE or CHAMPUS impact calculation: (a) by Year and Month; (b) by Refilled or not Refilled, Year and Month; (c) by Pharmacy; and (d) by Prescriber.

3. Provide documents sufficient to define any acronyms or explain terms used to identify the fields for data produced in response to Request Nos. 1 and 2 above.